IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.70 OF 2001
IN
WRIT PETITION NO.6051 OF 1995

M/s Empire Industries Ltd.
(Garlick Engineering Division)
a Company incorporated under the
provisions of The Companies Act,
1956, having its registered office
Empress house, 414, Senapati
Bapat Marg, Mumbai-400 013 and
factory at MIDC Industrial Area,
Engineering Zone, P.B.No.-08,
Ambernath-421 501, Dist-Thane. .. Appellant

Vs

1. State of Maharashtra,
Industries, Energy and Labour
Department, having its office at
Mantralaya,
Mumbai-400 032.

2. The Rashtriya General Kamgar Union
a Trade Union, registered under
the Trade Unions Act, 1926, having
its office at
Maa Bhavani Apartments,
Near Paradkar Hospital, 302, 1st Floor,
Bhaskar Colony, Naupada,
Thane.

3. The Association of Engg.Workers
a Trade Union recognised under the
MRTU & PULP Act, 1971, having its
office at 252, Janata Colony,
Ram Narayan Marg,
Ghatkoper, Mumbai-400 077. ..Respondents

Mr K.K.Singhvi, Senior Advocate with Mr K.M.Naik,
for the appellant.
Ms. Gayatri Singh, for respondent no.3.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : APRIL 1ST, 2005.

JUDGMENT : (PER D.B.BHOSALE, J.)

1. This Letters Patent Appeal is directed against the judgment and order dated 9.2.2001 rendered by the learned Single Judge, dismissing the Writ Petition No.6051 of 1995, filed against the order dated 23.9.1992 issued by respondent no.1 under section 10(3) of the Industrial Disputes Act, 1947 (for short, "the I.D.Act"). By that order, continuance of the lock out at the factory of the appellant's company, which had started on 14.10.1991, had been prohibited.

2. The background facts, in nutshell, are as follows. The appellant is a public limited company incorporated under the provisions of the Companies Act,1956. It has a factory at Ambarnath which was engaged in the business of manufacturing of E.O.T.Cranes. Respondent nos. 2 and 3 are the Unions of the workmen employed in the factory of the appellant-company. Respondent no.3 claim to be a recognised union. The dispute between the two unions is not relevant for deciding this letters patent appeal, since the issue that was raised before the learned Single Judge whether reference under section

10(1) of the I.D. Act made on the basis of the Charter of demands submitted by respondent no.2-union, is bad and consequently liable to be quashed and set aside, has not been pressed in the instant Appeal. It appears that various settlements were signed with respondent no.3-union and the last such settlement was signed on 24.12.1986 which expired in June, 1989. A fresh Charter of demands was submitted by respondent no.3 on 27.7.1989 whereas respondent no.2 submitted their Charter of demands on 21.11.1991. The appellant could not meet with the demands as, according to them, they were incurring heavy losses and at the material time there were accumulated losses of Rs.11.05 crores. Various meetings took place between the representatives of the appellant and the office bearers of the recognised union, wherein they were explained by the appellant the circumstances under which their undertaking was not in a position to meet their demands. It was pointed out, according to the appellant, that unless the recognised union was agreeable for imposition of ceiling on D.A.allowance as also reduction in manpower, the factory would not be economically viable. Since the union and their workmen did not concede the appellant’s demand for imposition of ceiling on D.A. and reduction in

manpower, the appellant issued a notice of lock-out dated 28.9.1991. It may be noticed that even prior to issuance of the lockout notice, a notice of change under section 9A of the ID Act for fixing ceiling on D.A was given by the appellant on 27.11.1990. In pursuance of the lock out notice, the lock out was started on 14.10.1991. As mentioned earlier, respondent no.2- union also submitted its Charter of demands on 21.11.1991 claiming that majority of the workmen of the factory had become its members and that the appellant should negotiate and sign settlement with respondent no.2. Respondent no.1 issued two orders on 23.9.1992, the first being an order under section 10(1)(d) of the I.D.Act. By that order, the Charter of demands raised by respondent no.2 was referred for adjudication of the industrial dispute at Thane. In so far as the second order is concerned, it was issued under section 10(3) of the I.D.Act prohibiting the continuation of lock out at the said factory which was impugned in the writ petition. The reference made by respondent no.1 under section 10(1)(d) on 23.9.1992 and the reference dated 12.2.1992 made in pursuance of the Notice of change under section 9A of the I.D.Act for the purposes to impose ceiling on D.A., are still pending. The impugned order under section 10 (3) of

the I.D.Act, however, was passed prohibiting continuation of lock out at the said factory.

3. The learned Single Judge in paragraph 4 of the impugned order formulated the grounds of objections raised in the petition which read thus:

> (a) The reference at the instance of respondent no.2 could not have been made as it was not a recognised Union under the M.R.T.U. & P.U.L.P. Act. The recognised Union was the 3rd respondent. The reference, therefore, is bad and consequently liable to be quashed and set aside.
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> (b) The employer had disputes with the workmen in so far as (a) D.A. and (b) reduction in staff. There was only a reference to the Industrial Tribunal in so far as D.A., is concerned. There was no reference in so far as reduction of staff is concerned and consequently the order prohibiting the continuance of lockout was contrary to section 10(3) of the I.D. Act".

As stated earlier, we are not dealing with the first ground since Mr K.K.Singhvi, learned senior counsel for the appellant, did not press that ground. While dealing with the second ground, the learned Single Judge in paragraph 8 of the Judgment rejected the submission of Mr Singhvi. The relevant observations in paragraph 8 of the impugned judgment reads thus:

"... ....Section 9-A comes into operation when an employer proposes to effect any change in the conditions of services applicable to any workman in respect of any matter specified in the Fourth Schedule. In other words in those situation when the IVth Schedule is attracted management has to follow the procedure set out under Section 9-A. A perusal of the IVth Schedule would indicate one such item being Item No.11 which reads as under:-

"Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control".

Therefore, if the employer wanted to reduce or remove surplus workmen the I.D.Act itself provide the manner and mechanism by which that exercise could have been undertaken. In other words apart from following the procedural requirement there is no embargo on the employer to reduce the number of workmen. This is not therefore, a dispute which the employer was bound to raise with the workmen and to have it referred for adjudication at the instance of the Employer. On the contrary on adjudication cannot be borne out considering the scheme of the I.D.Act. In case of reduction of workmen if surplus, the Act itself provides a mechanism. Even in a case where there is likely retrenchment occasioned by rationalisation, standardisation or improvement of plant or technique the employer can so do by following the procedure laid down under section 9A. That being the case the judgment of the Apex Court in the case of Delhi Administration (supra) would be inapplicable considering the case in hand and it would be inapplicable in so far as the retrenchment/termination of

> the services of surplus workmen are concerned... ... ..."

4. It is against this backdrop, we heard the learned counsel for the parties, perused the impugned order as also other material placed before us. Mr.K.K.Singhvi, learned senior counsel for the appellant, submitted that for the Government to exercise its power under section 10(3) of the I.D.Act, two conditions are necessary, viz. existence of an industrial dispute and such existing dispute must have been referred to the Labour Court/Tribunal, as the case may be. He invited our attention to the order of reference dated 23.9.1992 passed under section 10(1) and the impugned order of the very date passed under section 10(3) of the I.D.Act. Our attention was also drawn to the order dated 12.2.1992 referring the management's demand for ceiling on D.A for adjudication. In so far as the orders dated 23.9.1992 are concerned, according to Mr K.K.Singhvi, they clearly demonstrate that it was only charter of demands of the workmen which was referred and not the dispute/demand raised by the appellant in their notice of the lock out and, in view thereof, section 10(3) cannot be pressed into service to prohibit the lock out. In other words,

the appellant's demand/dispute for reduction of surplus manpower which was connected with the lock out, had not been referred and that was not taken into account while passing the prohibitory order under section 10(3) of the I.D.Act. Mr Singhvi, submitted that section 10 (3) comes into play only when the demand is referred for adjudication. Section 10(3) had nothing to do with whether the lock out is justified or not. It applies when two conditions exist viz.there is a demand and such demand has been referred for adjudication. Therefore, he submitted that if any one of these two conditions is missing, the power under section 10(3) cannot be exercised. In support of this contention, he relied upon the judgment of the Apex Court in the case of **Delhi Administration and Workmen of Edward Eventers and Anr, 1978 (II) LLJ 209 (SC)**. Mr Singhavi, also placed reliance upon the judgment of the Apex Court in the case of State of **Madras Vs. C.P.Sarathy and Anr, AIR 1953 SC 53** in support of his contention that a demand in specific particulars is not required to be raised in order to constitute industrial dispute under the I.D.Act. The particulars of demand can be furnished before the Industrial Tribunal/Labour Court when the industrial dispute is referred to it for adjudication. Lastly,

Mr Singhvi submitted that the learned Single Judge did not appreciate the ratio laid down by the Apex Court in Delhi Administration case in a proper prospective and has wrongly observed that there was no necessity for the appellant to raise such demand since the appellant could have compelled the government to make a reference by resorting to the provisions of section 9A of the I.D.Act.

5. On the other hand, Ms. Gayatri Singh, learned counsel for respondent no.3 - union, submitted that the company cannot raise every dispute, such as reduction of man power, through lock out notice. If any change is to be brought about in the service conditions of employees which adversely affect them and if the change is covered in any of the Items under Schedule IV of the I.D. Act, a notice of change under section 9A of the I.D.Act has to be given which is a mandatory requirement under the law. She further submitted that the objective behind issuing notice under section 9A has been set out in a number of cases by the Supreme Court. She placed heavy reliance upon the judgment of the Apex Court in the case of the **Management of Indian Oil Corporation Ltd Versus its workmen, AIR 1975 SC 1856**. In short, she submitted that the view taken by the learned

Single Judge cannot be faulted. She also submitted, probably in the alternative, that if the surplus labour is to be reduced it would squarely fall under retrenchment as defined under section 2 (oo) of the I.D.Act. Since at the relevant time there were more than 400 employees, section 25N in Chapter IV-B is clearly applicable to the appellant company. Therefore, it was mandatory to comply with the provisions contained in section 25N before retrenchment takes place. Workers could not have arrived at settlement in that regard. Hence, a separate application under section 25N had to be given to the appropriate authority giving details as to why the retrenchment was to be sought and for how many workers. In short, without prior permission from the appropriate authority, there cannot be retrenchment as defined under section 2 (oo) of the I.D.Act by issuing lock out notice making a demand of reduction of surplus labour. She next contended that the notice of lock out was nothing but a counter demand made by the appellant to pressurise the union to accept the ceiling on D.A. She invited our attention to the notice of change dated 27.11.1990 issued under section 9A and submitted that if the company had to demand reduction of surplus labour it could have included that demand also in the said

notice. Even in the conciliation proceedings held before the Conciliation Officer in pursuance of the notice of change the so-called dispute in respect of reduction of surplus labour was not raised at all. The act of imposing lock out was only to bring pressure on the union for accepting their demand for ceiling on D.A.

6. Before we deal with the question raised in the instant appeal, it would be useful to look into the judgment of the Apex Court in the case of **Delhi Administration** (supra) on which heavy reliance was placed by the appellant. As a matter of fact the arguments advanced on behalf of the appellant was based only on this judgment. The Apex Court in this judgment was considering a narrow issue as to when the power to prohibit the strike with which the State/appropriate Government is armed under section 10(3) of the I.D.Act, can be put into operation. This issue fell for consideration of the Apex Court in the light of the fact that the workmen resorted to strike in respect of the demands which were not referred to, though raised, under section 10(1). While dealing with this question,the Apex Court in paragraphs 2,3,4 and 5 of the Judgment held thus :

"2. A plain reading of the sub-section leaves no room for doubt in our mind that the High Court has correctly interpreted it. Indeed, the learned Judges have gone into details, although we in this affirming judgment desire to express ourselves only briefly. Two conditions are necessary to make S.10(3) applicable. There must be an industrial dispute existing and such existing dispute must have been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, namely, S.10(1). Section 10 stands as a self-contained code as it were so far as this subject-matter is concerned. The prohibitory power springs into existence only when such dispute has been made the subject of reference under S.10(1). That then is such dispute ? The suchness of the dispute is abundantly brought out in the preceding portion of the sub-section. Clearly there must be an industrial dispute in existence. Secondly, such dispute must have been already referred for adjudication. Then, and then alone, the power to prohibit in respect of such referred dispute can be exercised.

3. There is distinction between strikes being illegal under other sections of the Act and penalties being available against such illegal strikes on the one hand and strikes being contrary to S.10(3) of the Act and liable to be prohibited thereunder. This distinction once grasped, the baselessness of the submission on behalf of the appellant necessarily follows.

4. Shri Aggarwal pressed before us a ruling reported in Keventers Karmachari Sangh V. Lt.Governor of Delhi and another, decided by the Delhi High Court. Although the ration there is contrary to the same High Court’s ruling which is the subject matter of the present appeal, we are obviously inclined to adopt the reasoning of the judgment under appeal. Imagine twenty

> good grounds of dispute being raised in a charter of demands by the workmen and the appropriate Government unilaterally and subjectively deciding against the workmen on nineteen of them and referring only one for adjudication, how can this result in the anomalous situation of the workmen being deprived of their basic right to go on strike in support of those nineteen demands. This would be productive not of industrial peace, which is the object of the Industrial Disputes Act but counter-productive of such a purpose. If Government feels that it should prohibit a strike under S.10(3) it must give scope for the merits of such a dispute of demand being gone into by some other adjudicatory body by making a reference of all those demands under S.10(1) as disputes. In regard to such disputes as are not referred under S.10(1), S.10(3) cannot operate. This stands to reason and justice and a demand which is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of industrial jurisprudence.
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> 5. Thus, on principle and the text of the law, we are convinced that S.10(3) comes into play when the basis of the strike is covered by S.10(1). Reference of a dispute and prohibition of a strike on other demands is impermissible".

It is on the basis of this judgment it was submitted that the management had raised two demands/dispute, viz. ceiling on D.A. and reduction of surplus labour/manpower. Out of which the dispute in respect of ceiling on D.A. only was referred to and, therefore, respondent no.1 had no jurisdiction to

pass prohibitory orders under section 10(3) of the I.D.Act against the lock out which was declared in respect of their specific demand/dispute for reduction of surplus labour. It was, therefore, submitted that in any case respondent no.1 could not have passed the order under section 10(3) in the reference made under section 10(1) in pursuance of the charter of demands of the respondent-union.

7. To consider and appreciate the arguments advanced by the learned counsel for the parties it would be useful to quote section 9A of the I.D.Act which reads thus:

> "9A. Notice of change:- No employer, who proposes to effect any change in conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected or
>
> (b) within twenty-one days of giving such notice;
>
> Provided that no notice shall be required for effecting any such change--
>
> (a) where the change is effected in pursuance of any (settlement or award); or
>
> (b) where the workmen likely to be affected by the change are persons to

> whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply".

Section 9A clearly provides that no employer, who proposes to effect any change in conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving a notice to the workmen who are likely to be affected by such change. Item 11 of the fourth Schedule provides any increases or reduction other than casual in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control. The Apex Court in the case of **L.Robert D'Souza and Executive Engineer, Southern Railway and another, 1982 (I) LLJ 330** had an occasion to deal with the provisions contained in section 9A. In that case, it was observed that in order to attract Section 9A the employer must be desirous of effecting a change in conditions of service in respect of any matter

specified in Fourth Schedule. If the change proposed does not cover any matter in Fourth Schedule section 9A is not attracted and in that case no notice is necessary. Similarly the Apex Court in **Indian Oil Corporation Ltd case** (supra) while dealing with Item No.11 of Schedule IV of the I.D.Act, observed that sudden withdrawal of the concession in the conditions of service would materially and adversely affect the workmen.A plain reading of section 9A of the I.D.Act would show in order to attract that section an employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. In other words, if the change proposed does not cover any matter in Fourth schedule, section 9A is not attracted and in that case no notice would be necessary. Therefore, for the employer, who desires to reduce or remove surplus workmen, section 9A read with item No.11 in the Fourth Schedule clearly provides the machinery by which that exercise could be undertaken.

8. At this stage we would also like to consider an alternative submission advanced by Ms.Gayatri Singh, learned counsel for respondent no.3 - union, that it was possible for the appellant to terminate the services of the workmen by following the

procedure under section 25N of the I.D.Act since admittedly there were more than 100 workmen working in the company. It was not disputed that the company had more than 100 workmen at the relevant time. As a matter of fact, the workmen working at the relevant time were above 400. The provisions under section 25N for retrenchment and section 25O for closure in Chapter V-B of the I.D.Act are mandatory as held by the Apex Court in **Workmen of Meenakshi Mills Ltd and ors Vs. Meenakshi Mills Ltd and Anr, (1992) 3 SCC 336**. These provisions provide that in case of retrenchment the company has to make an application seeking retrenchment of a particular number of employees, giving details, seniority etc of the employees and the nature of their work and further justification for the said retrenchment. Notice of its application also requires to be given to the workmen. The appropriate authorities, after giving an opportunity of being heard and considering an evidence on record, is expected to pass order under section 25N. It was therefore, submitted that even if it is assumed in the facts of the present case, that the provisions of section 9A are not attracted, it was open for the appellant to resort to the remedy provided under section 25N of the I.D.Act for reduction of manpower and the company was not

bound/obliged to raise the dispute by issuing notice of lock out.

9. The employer cannot be encouraged to resort to an indirect method to defeat the very object and the scheme of the I.D.Act by allowing it to raise a dispute which, otherwise, could be dealt with by resorting to the mandatory provisions in the I.D.Act. By allowing the management to raise a dispute, such as reduction of manpower, which could be remedied by resorting to the provisions of the I.D.Act cannot be allowed to be raised by issuing a lock out notice and seek reference under section 10(1). If the employer is allowed to raise such dispute, it would not only defeat the object of the Act but it would render the provisions which are mandatory in nature meaningless. The I.D.Act provides the manner and the machinery by which an exercise of reduction of surplus workmen can be undertaken. As observed by the learned Single Judge and with which we respectfully agree that apart from following the procedural requirements, there is no embargo on the employer to reduce the number of workmen and, therefore, the demand of reduction of the manpower in the present case is not a dispute which the employer was obliged/bound to raise with the workmen and to have it referred for adjudication

at the instance of the employer. The learned Single Judge has rightly rejected the contention advanced on behalf of the appellant that the issue of reduction of manpower also ought to have been referred for adjudication. As observed earlier, the scheme of I.D.Act provides sufficient machinery for reduction of workmen.

10. In the present case, it cannot be overlooked that when a notice of change dated 27.8.1990 under section 9A was given by the appellant it was given only for fixing ceiling on D.A. and no reference whatsoever was made in the said notice to their demand of reduction of surplus labour. Respondent no.1 made reference vide their order dated 12.2.1992 in pursuance of the notice of change that was given under section 9A by the appellant for fixing ceiling on D.A, whereas the notice of lock out was given on 28.9.1991 and it was started on 14.10.1991. The reference under section 10(1) in pursuance of the charter of demands dated 21.11.1991 was made on 23.9.1992. The aforementioned dates clearly demonstrate that it was possible for the appellant to give notice of change under section 9A for reduction of surplus workmen also. There was no reason for the appellant to raise a dispute in respect of surplus

workmen in the lock out notice. If the companies are allowed to raise dispute relating to reduction of man power, for which remedies in the scheme of the Act are clearly provided and which could be availed of by the employer without any difficulty, the very object of the Act would be defeated. The remedies available in law which are mandatory in nature, cannot be rendered meaningless. The appellant had ample powers under the provisions of the I.D.Act to reduce the number of workmen and it was not bound to raise a dispute with the workmen and to have it referred for adjudication at their instance. It is against this backdrop, in our opinion, the judgment of the Apex Court in the case of **Delhi Administration** (supra) would be inapplicable. After having observed that the employer was not bound to raise the dispute relating to manpower what remains is only demand of reduction of D.A. In other words, the demand/dispute raised in respect of reduction of manpower could not have been referred under section 10(1) and, therefore, the order passed under section 10(3) of the I.D.Act cannot be faulted. We have, therefore, no hesitation in dismissing this letters patent appeal filed against the order of learned Single Judge upholding the order under section 10(3) by which the lock out declared and started by the

employer was prohibited. The Letters Patent Appeal is dismissed. No costs.

(D.B.BHOSALE, J.) (S.B.MHASE, J.)

11. After the judgment is declared, at this stage, Shri Sujit Salkar holding for Shri S.P.Dhulapkar, learned counsel for the appellant submits that the interim order which was in force during the pendency of this letters patent appeal may be continued for a period of eight weeks. Ms.Nerissa Britto holding for Ms.Gayatri Singh, learned counsel for respondent no.3 opposes for granting such a time. However, in the interest of justice we find it appropriate to grant six weeks time. Therefore, the interim order shall remain operative for a period of six weeks from today.

(D.B.BHOSALE, J.) (S.B.MHASE, J.)

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